

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU


RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 03/19/2009 (Per: RCT)




 Appendix A ... Part 05 of 06




 The 2007 drafting file for LRB-0447

has been transferred to the drafting file for

2009 LRB-0203

 This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1 **91.30 Authority to adopt.** A political subdivision may adopt a farmland
2 preservation zoning ordinance.

****NOTE: Does the draft need to address issues about whether county farmland
preservation zoning applies in a town? See current s. 91.73.

3 **91.32 Certified ordinance.** The following zoning ordinances are certified, for
4 the purposes of this chapter and s. 71.613:

5 (1) An exclusive agricultural use zoning ordinance that was certified under s.
6 91.06, 2005 stats., and the certification has not expired or been withdrawn.

7 (2) A farmland preservation zoning ordinance that was certified under s. 91.36
8 and the certification has not expired or been withdrawn.

9 **91.34 Expiration of zoning certification.** (1) The certification of a
10 farmland preservation zoning ordinance that was certified under s. 91.06, 2005
11 stats., expires on the date provided in the certification or, if the certification does not
12 provide an expiration date, on the following date:

13 (a) January 1, 2011, ^{December 31, 2012} for a county with a population of 216 or more persons per
14 square mile or a city, village, or town in such a county.

15 (b) January 1, 2012, ^{December 31, 2013} for a county with a population of 76 to 215 persons per
16 square mile or a city, village, or town in such a county.

17 (c) January 1, 2013, ^{December 31, 2014} for a county with a population of 46 to 75 persons per
18 square mile or a city, village, or town in such a county.

19 (d) January 1, 2014, ^{December 31, 2015} for a county with a population of 30 to 45 persons per
20 square mile or a city, village, or town in such a county.

21 (e) January 1, 2015, ^{December 31, 2016} for a county with a population of 20 to 29 ^{or fewer} persons per
22 square mile or a city, village, or town in such a county.

1 (f) January 1, 2016, for a county with a population of 1 to 19 persons per square
2 mile or a city, village, or town in such a county.

3 (2) The certification of a farmland preservation zoning ordinance that the
4 department certifies under s. 91.36 expires on the date specified under s. 91.36 (2).

Insert
35-4
ref
****NOTE: See the note following s. 91.14

5 **91.36 Certification of zoning ordinance by the department. (1)**

6 GENERAL. The department may certify a farmland preservation zoning ordinance or
7 an amendment to a farmland preservation zoning ordinance as provided in this
8 section.

9 (2) CERTIFICATION PERIOD. (a) The department may certify a farmland
10 preservation zoning ordinance for a period that does not exceed 10 years. The
11 department shall specify the expiration date of the certification of the farmland
12 preservation zoning ordinance in the certification.

13 (b) The certification of an amendment to a certified farmland preservation
14 zoning ordinance expires on the date that the certification of the farmland
15 preservation zoning ordinance expires, except that the department may treat a
16 comprehensive revision of a certified farmland preservation zoning ordinance as a
17 new farmland preservation zoning ordinance and specify an expiration date for the
18 certification of the revised farmland preservation zoning ordinance as provided in
19 par. (a).

20 (3) SCOPE OF DEPARTMENT REVIEW. (a) The department may certify a farmland
21 preservation zoning ordinance or amendment to a farmland preservation zoning
22 ordinance based on statements submitted under s. 91.40 (3) (a) and (4), without
23 conducting any additional review or audit.

(b) The department may do any of the following before it certifies a farmland preservation zoning ordinance or amendment:

1. Review the farmland preservation zoning ordinance or amendment for compliance with the requirements under s. 91.38.

2. Review and *independently verify* audit the application for certification, including the statements under s. 91.40 (3) and (4).

****NOTE: See the note following s. 91.16 (3) (b) 2. about review of plans.

(4) DENIAL OF CERTIFICATION. The department shall deny an application for certification of a farmland preservation zoning ordinance or amendment if the department finds any of the following:

(a) That the farmland preservation zoning ordinance or amendment does not comply with the requirements in s. 91.38.

(b) That the application for certification does not comply with s. 91.40.

(5) WRITTEN DECISION; DEADLINE. The department shall grant or deny an application for certification under this section no more than 90 days after the day on which the political subdivision submits a complete application, unless the political subdivision agrees to an extension. The department shall issue its decision in the form required by s. 227.47 (1).

(6) CONDITIONAL CERTIFICATION. The department may grant an application for certification under this section subject to conditions specified by the department in its decision under sub. (5). The department may certify a farmland preservation zoning ordinance contingent upon the political subdivision adopting the farmland preservation zoning ordinance as certified.

(7) EFFECTIVE DATE OF CERTIFICATION. A certification under this section takes effect on the day on which the department issues the certification, except that if the

1 department specifies conditions under sub. (6), the certification takes effect on the
2 day on which the department determines that the political subdivision has met the
3 conditions.

4 (8) AMENDMENTS TO ORDINANCES; CERTIFICATION. (a) Except as provided in par.
5 (b), an amendment to a certified farmland preservation zoning ordinance is
6 automatically considered to be certified as part of the certified farmland preservation
7 zoning ordinance.

8 (b) An owner may not claim farmland preservation tax credits under an
9 amendment to a certified farmland preservation zoning ordinance that is one of the
10 following and that is adopted after the effective date of this paragraph [revisor
11 inserts date], unless the amendment is certified by the department under this
12 section:

13 1. An amendment that is a comprehensive revision of a certified farmland
14 preservation zoning ordinance.

15 2. An amendment that extends coverage of a certified farmland preservation
16 zoning ordinance to a town that was not previously covered.

17 3. An ordinance of a type specified by the department by rule that may
18 materially affect compliance of the certified farmland preservation zoning ordinance
19 with the requirements under s. 91.38.

****NOTE: Everything that relates to eligibility for the credit should be in ch. 71 or
at least referenced there. I do not see a reference to this (par. (b)) in ch. 71.

20 (c) The department may withdraw certification of a farmland preservation
21 zoning ordinance if, as a result of an amendment adopted after the effective date of
22 this paragraph [revisor inserts date], the amended farmland preservation zoning
23 ordinance fails to comply with the requirements under s. 91.38. This paragraph

1 applies regardless of whether the farmland preservation zoning ordinance was
2 originally certified under s. 91.06, 2005 stats., or under this section.

3 (d) A political subdivision shall notify the department in writing whenever the
4 political subdivision adopts a material amendment to a certified farmland
5 preservation zoning ordinance. The political subdivision shall include a copy of the
6 amendment in the notice. For the purposes of this paragraph, an amendment that
7 rezones land out of a farmland preservation zoning district is not a material
8 amendment.

9 **91.38 Requirements for certification of ordinance.** (1) A farmland
10 preservation zoning ordinance does not qualify for certification under s. 91.36 unless
11 all of the following apply:

12 (a) The political subdivision develops and adopts the farmland preservation
13 zoning ordinance in accordance with relevant law.

***NOTE: It would be better to specifically reference the laws that this is intended
to apply to. Is this meant to refer to the zoning laws under the county, city, village, and
town chapters of the statutes?

***NOTE: The proposed draft required a declaration of purpose in the ordinance.
There are a number of reasons that laws, including ordinances, should not contain
purpose statements. If an ordinance actually protects farmland, the absence of a purpose
statement is irrelevant and it seems pointless to deny certification on that basis.

14 (a) (b) The farmland preservation zoning ordinance includes jurisdictional,
15 organizational, and enforcement provisions that are necessary for proper
16 administration.

17 (c) The farmland preservation zoning ordinance clearly designates farmland
18 preservation zoning districts in which land uses are limited in compliance with s.
19 91.42.

20 (d) The farmland preservation zoning ordinance includes maps that clearly
21 delineate each farmland preservation zoning district, so that a reader can easily

1 determine whether a parcel is within a farmland preservation zoning district; that
2 are correlated to the text under par. (e); and that comply with technical specifications
3 that the department establishes by rule.

4 (e) The text of the farmland preservation zoning ordinance clearly describes the
5 types of land uses authorized in each farmland preservation zoning district.

6 (f) The farmland preservation zoning ordinance is ^{substantially} consistent with a certified
7 farmland preservation plan.

8 (g) Except as provided by the department by rule, land is not included in a
9 farmland preservation zoning district unless the land is included in a farmland
10 preservation plan area identified in the county certified farmland preservation plan.

****NOTE: Is it possible for an ordinance to be consistent with a plan, as required by par. (f), if there is land in a farmland preservation zoning district that is not in a farmland preservation plan area? If not, pars. (f) and (g) should be combined to provide something like: The farmland preservation zoning ordinance is consistent with the county certified farmland preservation plan, except that land that is not included in a farmland preservation plan area may be included in a farmland preservation zoning district as provided by the department by rule.

11 (h) If an overlay district, such as an environmental corridor, is superimposed
12 on a farmland preservation zoning district, all of the following apply:

13 1. The farmland preservation zoning ordinance clearly identifies the overlay
14 district as such.

15 2. The overlay district is shown on the maps under par. (d) in a way that allows
16 a reader to easily identify the underlying farmland preservation zoning district and
17 its boundaries.

18 3. The overlay district does not remove land use restrictions from the
19 underlying farmland preservation zoning district.

****NOTE: Although I have a general idea of what is meant by "overlay district," it is not a concept that appears in the statutes. The draft will have to either define the term "overlay district" or describe the concept thoroughly enough that readers can understand what is meant.

1 (i) The farmland preservation zoning ordinance complies with any other
2 requirements that the department specifies by rule.

3 (2) An amendment to a farmland preservation zoning ordinance qualifies for
4 certification under s. 91.36 if it complies with all of the requirements in sub. (1) that
5 are relevant to the amendment and it does not cause the farmland preservation
6 zoning ordinance to violate any of the requirements in sub. (1).

7 **91.40 Applying for certification of ordinance.** A political subdivision
8 seeking certification of a farmland preservation zoning ordinance or amendment to
9 a farmland preservation zoning ordinance shall submit all of the following to the
10 department in writing, along with any other relevant information that the political
11 subdivision chooses to provide:

12 (1) The complete farmland preservation zoning ordinance or amendment
13 proposed for certification.

14 (2) All of the following background information:

15 (a) A concise summary of the farmland preservation zoning ordinance or
16 amendment, including key changes from any previously certified farmland
17 preservation zoning ordinance.

18 (b) A concise summary of the process by which the farmland preservation
19 zoning ordinance or amendment was developed, including public hearings, notice to
20 and involvement of other governmental units, approval by the political subdivision,
21 and identification of any key unresolved issues with other governmental units
22 related to the farmland preservation zoning ordinance or amendment.

23 (c) A description of the relationship of the farmland preservation zoning
24 ordinance or amendment to the county certified farmland preservation plan,

1 including any material inconsistencies between the farmland preservation zoning
2 ordinance or amendment and the county certified farmland preservation plan.

3 (3) One of the following:

4 (a) A statement, signed by the county planning director, certifying that the
5 farmland preservation zoning ordinance or amendment complies with s. 91.38 (1) (g)
6 and (h).

****NOTE: I do not believe that counties are required to have planning directors.
If they are not and it is desired to specify who signs the statement, this must specify an
officer or body that all counties must have. See also the next paragraph.

7 (b) A statement, signed by the applicant's chief elected official, certifying that
8 the county planning director failed or refused to comply with a request to provide a
9 statement under par. (a) and including the reason given by the county planning
10 director, if the county planning director gave a reason.

11 (4) A statement, signed by the applicant's attorney or chief elected official,
12 certifying that the farmland preservation zoning ordinance or amendment complies
13 with all applicable requirements in s. 91.38.

14 (5) Other relevant information that the department requires by rule.

15 **91.42 Land use in farmland preservation zoning districts; general.** A
16 farmland preservation zoning ordinance does not qualify for certification under s.
17 91.36, if the farmland preservation zoning ordinance allows a land use in a farmland
18 preservation zoning district other than the following land uses:

19 (1) Uses identified as authorized ^{or permitted} uses in s. 91.44.

20 (2) Uses identified as conditional uses in s. 91.46.

21 (3) Prior nonconforming uses, subject to the following:

1 (a) A prior nonconforming use that is a residence may be expanded or
2 remodeled, as long as there is no increase in the number of dwelling units in the
3 residence.

4 (b) A prior nonconforming use that is not a residence may continue without
5 further approval unless it is materially altered.

Insert
6 42-5 (4) Other uses allowed by the department by rule.

7 **91.44 Authorized uses.** A farmland preservation zoning ordinance does not
8 comply with s. 91.42 if the farmland preservation zoning ordinance allows as an
9 authorized use in a farmland preservation zoning district a land use other than the
10 following land uses:

****NOTE: The introduction in the proposed draft began with "except as provided by the department by rule." I omitted that because it seemed redundant of sub. (7). If it was meant to allow DATCP to narrow the authorized uses, please let me know and I will modify the draft.

11 (a) (1) Agricultural uses.

12 (b) (2) Accessory uses.

****NOTE: Farm residences are included in the definition of "accessory use." It would be redundant to list them here.

13 (c) (3) Agriculture-related uses.

14 (d) (4) Nonfarm residences constructed in a rural residential cluster in accordance
15 with an approval of the cluster as a conditional use under s. 91.46 (1) (e).

16 (e) (5) Undeveloped natural resource and open space areas.

****NOTE: Any zoning district may contain undeveloped land. It is not clear why this language is wanted or what an "undeveloped natural resource" area is or that this provision describes a land use. Are there some kinds of undeveloped areas that are intended to be prohibited from a farmland preservation zoning district?

17 (f) (6) A transportation, utility, communication, or other use that is required
18 under state or federal law to be located in a specific place or that is authorized to be

- 1 located in a specific place under a state or federal law that preempts the requirement
2 of a conditional use permit for that use.

****NOTE: The proposed language was confusing and I have attempted to clarify it. I do not think that it is necessary, however. If a state or federal law prevents a political subdivision from keeping a facility from being located in a farmland preservation district, the ordinance does not need to state that the facility is allowed there. It does not matter what the ordinance says. Do zoning ordinances provide, for example, that an electric transmission facility is allowed in an A-1 residential district if state or federal law requires or authorizes it to be placed there?

- 3 (g) ~~(7)~~ Other uses identified by the department by rule.

Insert
43-3
VLT

- 4 **91.46 Conditional uses. (1) GENERAL.** A farmland preservation zoning
5 ordinance does not comply with s. 91.42 if the farmland preservation zoning
6 ordinance allows as a conditional use in a farmland preservation zoning district a
7 land use other than the following land uses:

****NOTE: The introduction in the proposed draft began with "except as provided by the department by rule." I omitted that because it seemed redundant of par. (j). If it was meant to allow DATCP to narrow the conditional uses, please let me know and I will modify the draft.

- 8 (a) Agricultural uses.
9 (b) Accessory uses.
10 (c) Agriculture-related uses.
11 (d) Nonfarm residences that qualify under sub. (2) or that meet more restrictive
12 standards in the farmland preservation zoning ordinance.
13 (e) Nonfarm residential clusters that qualify under sub. (3) or that meet more
14 restrictive standards in the farmland preservation zoning ordinance.
15 (f) Transportation, communications, pipeline, electric transmission, utility, or
16 drainage uses that qualify under sub. (4).
17 (g) Governmental, institutional, religious, or nonprofit community uses, other
18 than uses covered by par. (f), that qualify under sub. (5).
19 (h) Nonmetallic mineral extraction that qualifies under sub. (6).

1 (i) Oil and gas exploration or production that is licensed by the department of
2 natural resources under subch. II of ch. 295.

3 (j) Other uses allowed by the department by rule.

4 (2) NONFARM RESIDENCES. A nonfarm residence qualifies for the purposes of sub.

5 (1) (d) if it is a single-family residence and the political subdivision determines that
6 all of the following apply:

7 (a) The ratio of nonfarm residential acreage to farm acreage on the base farm
8 tract on which the nonfarm residence will be located will not be greater than 1 to 20
9 after the nonfarm residence is constructed.

****NOTE: This would not seem to work if a farmer wanted to rent rather than sell
a nonfarm residence. In such a case, what would the farm acreage be?

10 (b) There will not be more than 4 nonfarm residences, nor more than 5
11 residences of any kind, on the base farm tract after the nonfarm residence is
12 constructed.

13 (c) The location of the proposed nonfarm residential parcel, and the location of
14 the nonfarm residence on that nonfarm residential parcel, will not do any of the
15 following:

16 1. Unnecessarily convert prime farmland from agricultural use.

****NOTE: It is unclear what kind of standards should be used to make this
determination. If the parcel is on prime farmland, under what conditions should it be
determined that it is necessary to put the house there? Could this be worded in a way that
would make it more clear what the governing body is supposed to consider? As it is, it
seems likely to me that this would simply be ignored.

17 2. Significantly impair or limit the current or future agricultural use of other
18 protected farmland.

19 (3) NONFARM RESIDENTIAL CLUSTER. A political subdivision may issue one
20 conditional use permit that covers more than one nonfarm residence in a qualifying

*Please see the discussion of the use of "unnecessarily" and "necessary" in the
drafters note submitted with this draft.*

1 nonfarm residential cluster. A nonfarm residential cluster qualifies for the purposes
2 of sub. (1) (e) if all of the following apply:

3 (a) The parcels on which the nonfarm residences would be located are
4 contiguous.

5 (b) The political subdivision imposes legal restrictions on the construction of
6 the nonfarm residences so that if all of the nonfarm residences were constructed,
7 each would satisfy the requirements under sub. (2).

8 (4) TRANSPORTATION, COMMUNICATIONS, PIPELINE, ELECTRIC TRANSMISSION, UTILITY,
9 OR DRAINAGE USE. A transportation, communications, pipeline, electric transmission,
10 utility, or drainage use qualifies for the purposes of sub. (1) (f) if all of the following
11 apply:

12 (a) The use and its location are necessary, considering alternative locations, or
13 are specifically approved under state or federal law.

***NOTE: "Under state or federal law" seems unclear. I think that many utility uses and many of the other kinds of uses listed here would be approved "under state law," if that means by a state agency, so that this requirement might be easily met in many cases. Highways are often authorized by legislation, I think, although the law may not specify the exact route. When it must be determined whether a *use and location* are "necessary," is that intended to mean that there is no alternative location, that the service to be provided is essential, and that there is no other way to provide the service? That would seem to be a very difficult standard to meet. If not, what is the requirement intended to mean? (I realize that this language is similar to current law.)

14 (b) The use does not unnecessarily convert land from agricultural use to other
15 uses or unnecessarily develop undeveloped natural resource or open space areas.

***NOTE: Again, taken literally, this would seem to be a very difficult standard to meet. Or is it meant to say that no more land is converted than is necessary to carry out the use (or something like that)?

16 (c) The use does not unnecessarily convert prime farmland from agricultural
17 use.

***NOTE: The issues here are similar to those raised in the preceding note and to those in the note following sub. (2) (c) 1. Does this actually add anything to what par. (b) provides, that is, would it be possible to satisfy par. (b) but violate this paragraph?

1 (d) The use does not unnecessarily impair or limit the current or future
2 agricultural use of other protected farmland.

****NOTE: Similar issues again.

3 (e) The farmland preservation zoning ordinance requires construction damage
4 to be limited and repaired, to the extent feasible, to maintain and restore the
5 agricultural use of the land.

6 (5) GOVERNMENTAL, INSTITUTIONAL, RELIGIOUS, OR NONPROFIT COMMUNITY USE. A
7 governmental, institutional, religious, or nonprofit community use qualifies for the
8 purposes of sub. (1) (g) if all of the following apply:

9 (a) The use and its location are necessary, considering alternative locations.

****NOTE: Similar issues to those under sub. (4).

10 (b) The use does not unnecessarily convert land from agricultural use to other
11 uses or develop undeveloped natural resource or open space areas.

****NOTE: Similar issues to those under sub. (4).

12 (c) The use does not unnecessarily convert prime farmland from agricultural
13 use.

****NOTE: Similar issues to those under sub. (4).

14 (d) The sum of the following does not exceed 5 acres:

15 1. The acreage converted from agricultural use to other uses.

16 2. The acreage of undeveloped natural resource or open space areas developed.

17 (e) The use does not unnecessarily impair or limit the current or future
18 agricultural use of other protected farmland.

****NOTE: Similar issues to those under sub. (4).

19 (f) The farmland preservation zoning ordinance requires construction damage
20 to be limited and repaired, to the extent feasible, to maintain and restore the
21 agricultural use of the land.

1 **(6) NONMETALLIC MINERAL EXTRACTION.** Nonmetallic mineral extraction
2 qualifies for the purposes of sub. (1) (h) if all of the following apply:

3 (a) The operation complies with subch. I of ch. 295 and rules promulgated under
4 that subchapter, with applicable provisions of the local ordinance under s. 295.13 or
5 295.14, and with any applicable requirements of the department of transportation
6 concerning the restoration of nonmetallic mining sites.

7 (b) The operation does not unnecessarily convert land from agricultural use to
8 other uses or develop undeveloped natural resource or open space areas.

9 (c) The operation does not unnecessarily convert prime farmland from
10 agricultural use.

11 (d) The operation does not unnecessarily impair or limit the current or future
12 agricultural use of other protected farmland.

13 (e) The farmland preservation zoning ordinance requires the land to be
14 restored to agricultural use, to the extent feasible and consistent with any required
15 locally approved reclamation plan, when extraction is completed.

****NOTE: There are similar issues here as with the earlier subsections.

16 **91.48 Rezoning of land out of a farmland preservation zoning district.**

17 (1) A political subdivision with a certified farmland preservation zoning ordinance may
18 rezone land out of a farmland preservation zoning district without having the
19 rezoning certified under s. 91.36, if all of the following apply:

20 (a) ~~(1)~~ The political subdivision finds all of the following, after public hearing:

21 1. (a) The land is better suited for a use not allowed in the farmland preservation
22 zoning district.

23 2. (b) The rezoning is consistent with any applicable comprehensive plan.

- 1 3. ^{substantially} (c) The rezoning is consistent with the county certified farmland preservation
2 plan.

****NOTE: Given that an ordinance (when it is adopted) must be consistent with the farmland preservation plan, is it possible for a rezoning out of a farmland preservation district to be consistent with the plan, unless the plan itself is amended? Note that the draft prohibits including in a farmland preservation plan area any land that is planned for development within 15 years.

- 3 4. (d) The rezoning will not impair or limit the agricultural use of other protected
4 farmland.

- 5 (b) (2) The owner of the land pays to the political subdivision a conversion fee equal
6 to ^{Insert 48-6 (a)} \$100 per acre of rezoned land or a different amount specified by the department
7 by rule.

- 8 (3) ² The political subdivision ^{shall} annually provides all of the following to the
9 department and, if the political subdivision is not a county, to the county:

****NOTE: It doesn't really seem workable to condition a particular rezoning on the local government doing this. What if a county approves a rezoning and then does not comply with this subsection?

- 10 (a) A description of the amount of land that the political subdivision has
11 rezoned out of a farmland preservation zoning district since the effective date of this
12 paragraph [revisor inserts date], or since the date it last complied with this
13 subsection, whichever is later, and a map that clearly shows the location of the land.

- 14 (b) A description of the amount of revenue that the political subdivision
15 received as conversion fees under sub. (2) ^{1 → 7 (b)} since the effective date of this paragraph
16 [revisor inserts date], or since the date it last complied with this subsection,
17 whichever is later.

- 18 **91.49 Use of conversion fees.** A political subdivision shall use conversion
19 fees received under s. 91.48 ^{(1)(b)} (2) for its costs related to farmland preservation
20 planning, zoning, or compliance monitoring.

1 **91.50 Exemption from special assessments.** (1) Except as provided in sub.
2 (3), no political subdivision, special purpose district, or other local governmental
3 entity may levy a special assessment for sanitary sewers, ^{or} water, lights, or drainage
4 against land in agricultural use, if the land is located in a farmland preservation
5 zoning district.

6 (2) A political subdivision, special purpose district or other local governmental
7 entity may deny the use of improvements for which the special assessment is levied
8 to land that is exempt from the assessment under sub. (1).

9 (3) The exemption under sub. (1) does not apply to any of the following:

10 (a) An assessment that an owner voluntarily pays, after the assessing
11 authority provides notice of the exemption under sub. (1).

12 (b) An assessment lawfully imposed by a drainage district under ch. 88.

****NOTE: Would any body other than a drainage district levy a special assessment for drainage? If not, "drainage" should be removed from sub. (1) and sub. (3) (b) should be deleted. I omitted proposed sub. (3) (c) because the exemption in sub. (1) only applies to land in agricultural use. Are assessments levied for "light"? I realize that's what current law says, but it seems outdated. Or, if it means "street lighting," using "street lighting" would make it more clear.

SUBCHAPTER IV

FARMLAND PRESERVATION AGREEMENTS

13 **91.60 Farmland preservation agreements; general.** (1) AGREEMENTS
14 AUTHORIZED. The department may enter into a farmland preservation agreement, in
15 compliance with s. 91.62, with the owner of a tract of land that is eligible under sub.
16 (2).

****NOTE: Is there some significance to the use of the word "tract" here, as opposed to parcel or some other word? One of the dictionary definitions of "parcel" is a tract or plot of land.

17 (2) ELIGIBLE LAND. A tract of land is eligible if all of the following apply:

1 (a) The ^{of land} tract consists of at least 35 contiguous acres on a farm that produced
2 at least \$6,000 in gross profits during the last taxable year preceding the year in
3 which the owner applies for a farmland preservation agreement or a total of at least
4 \$18,000 in gross farm profits during the last 3 taxable years preceding that year.

5 (b) The ^{of land} tract is located in a farmland preservation area identified in a ^{certified} farmland
6 preservation plan certified under s. 91.06, 2005 stats., if the certification included an
7 expiration date, or is located in a farmland preservation area identified in a farmland
8 preservation plan certified by the department under s. 91.16.

9 (c) The department has promulgated rules for designating working lands
10 enterprise areas.

11 (d) The ^{of land} tract is in a working lands enterprise area designated in accordance
12 with the rules under par. (c).

13 (3) PRIOR AGREEMENTS. (a) Except as provided in s. 91.66, a farmland
14 preservation agreement entered into before the effective date of this paragraph
15 [revisor inserts date], remains in effect for the term specified in the agreement and
16 under the terms that were agreed upon when the agreement was last created,
17 extended, or renewed.

****NOTE: Is this meant to include the penalty for withdrawing land from or
terminating an agreement? What about soil conservation standards?

18 (b) The department may not extend or renew a farmland preservation
19 agreement entered into before the effective date of this paragraph [revisor inserts
20 date.

21 **91.62 Farmland preservation agreements; requirements. (1) CONTENTS.**
22 The department may not enter into a farmland preservation agreement unless the
23 agreement does all of the following:

1 (a) Specifies a term of at least 15 years.

2 (b) Includes a correct legal description of the tract of land covered by the
3 farmland preservation agreement.

4 (c) Includes provisions that restrict the tract of land to the following uses:

5 1. Agricultural uses and accessory uses.

6 2. Undeveloped natural resource and open space uses.

7 (2) FORM. The department shall specify a form for farmland preservation
8 agreements that complies with s. 59.43 (2m).

9 (3) EFFECTIVENESS. A farmland preservation agreement takes effect when it is
10 signed by all owners of the land covered by the farmland preservation agreement and
11 by the department.

12 (4) RECORDING. The department shall provide a copy of a signed farmland
13 preservation agreement to a person designated by the signing owners and shall
14 promptly present the signed agreement to the register of deeds for the county in
15 which the land is located for recording.

****NOTE: Generally, documents are recorded rather than filed. See s. 59.43 (1) (a).
An agreement is recorded under current law (s. 91.13 (9)).

16 (5) CHANGE OF OWNERSHIP. A farmland preservation agreement is binding on
17 a person who purchases land during the term of a farmland preservation agreement
18 that covers the land.

19 **91.64 Applying for a farmland preservation agreement.** (1) SUBMITTING
20 AN APPLICATION. An owner who wishes to enter into a farmland preservation
21 agreement shall submit an application, on a form provided by the department, to the
22 county clerk of the county in which the land is located.

(2) CONTENTS OF APPLICATION. A person submitting an application under sub.

(1) shall include all of the following in the application:

(a) The name and address of each person who has an ownership interest in the land proposed for coverage by the agreement.

(b) The location of the land proposed for coverage, indicated by street address, global positioning system coordinates, or township, range, and section.

****NOTE: Should it say "subdivision of section" or "quarter" or "quarter-quarter" section, as is done in several places in the statutes?

(c) The legal description of the land proposed for coverage.

(d) A map or aerial photograph of the land proposed for coverage, showing parcel boundaries, residences and other structures, and significant natural features.

(e) Information showing that the land proposed for coverage is eligible under s. 91.60 (2).

(f) A description of every existing mortgage, easement and lien, other than liens on growing crops, on land proposed for coverage, including the name and address of the person holding the lien, mortgage, or easement.

(g) A signed ^{of agreement} statement from each person required to be identified under par.

(f) ^{of subordinating} acknowledging that the person's lien, mortgage, or easement will be subject to the land use restrictions in the agreement.

****NOTE: I am uncertain whether this language is intended to ensure that liens, mortgages, and easements are subject to the land use restrictions or simply to ensure notice that this will be the case. If the former, it should probably say that the person agrees that the person's interest is subject to the restrictions or that the person subordinates the person's interest or something like that. If this is just intended to ensure that the interest holder has notice, the question is whether, under other law, the person's interest would actually be subject to the agreement. I do not know whether that is so.

(h) Any other information required by the department by rule.

(i) Any fee under sub. (2m).

1 **(2m) COUNTY PROCESSING FEE.** A county may charge a reasonable fee for
2 processing an application for a farmland preservation agreement.

3 **(3) COUNTY REVIEW.** (a) A county shall review an application under sub. (2) to
4 determine whether the land proposed for coverage meets the requirements under s.
5 91.60 (2) (b) and (d). The county shall provide its findings to the applicant in writing
6 within 60 days after the day on which the county clerk receives a complete
7 application.

****NOTE: I don't think that it needs to say that the planning director may do this,
as in the proposed language, although if the intent is to impose restrictions on who may
do this, that should be made explicit. There is also the question of whether every county
has a planning director.

8 (b) If the county finds under par. (a) that the land proposed for coverage meets
9 the requirements under s. 91.60 (2) (b) and (d), the county shall promptly send all of
10 the following to the department, along with any other comments that the county
11 chooses to provide:

12 1. The original application, including all of the information provided with the
13 application.

14 2. A copy of the county's findings.

15 **(4) DEPARTMENT ACTION ON APPLICATION.** (a) The department may enter into *prepare a farmland preservation*
16 *the* farmland preservation agreement under s. 91.60 (1) based on a complete application *agreement that complies with*
17 and on county findings under sub. (3) (b), if the department finds that the proposed *s. 91.62 and*
18 farmland preservation agreement complies with s. 91.62.

****NOTE: Where does the proposed agreement come from? Under current law,
DATCP prepares it.

19 (b) The department may decline to enter into a farmland preservation
20 agreement for any of the following reasons:

21 1. The application is incomplete.

land is not eligible land under s. 91.60(2)

2. The proposed farmland preservation agreement does not comply with s. 91.62.

3. Other reasons provided to the applicant in writing.

***NOTE: Shouldn't there be some guidance in the law as to the kind of reasons that may be used?

91.66 Terminating a farmland preservation agreement. (1) The department may terminate a farmland preservation agreement or release land from a farmland preservation agreement at any time if all of the following apply:

(a) All of the owners of land covered by the farmland preservation agreement consent to the termination or release, in writing.

(b) The department finds that the termination or release will not impair or limit agricultural use of other protected farmland.

(c) The owners of the land pay to the department a conversion fee equal to \$100 per acre of land released from the farmland preservation agreement or a different amount specified by the department by rule, except that no conversion fee is required if the land is converted from agricultural use by direct government action, including government purchase or condemnation.

Should the amount of the fee be changed, given the change to proposed s. 91.48(1)(b)?

***NOTE: "Direct government action" seems unclear to me. Is there some other kind of governmental action than purchase or condemnation that could cause land to be converted from agricultural use? If not, it would be better to eliminate that phrase. If so, please let me know and I will try to clarify this.

(2) The department shall provide a copy of its decision to terminate a farmland preservation agreement or release land from a farmland preservation agreement to a person designated by the owners of the land and shall present a copy of the decision to the register of deeds for the county in which the land is located for recording.

91.68 Violations of farmland preservation agreements. (1) The department may bring an action in circuit court to do any of the following:

1 (a) Enforce a farmland preservation agreement.

2 (b) Restrain, by temporary or permanent injunction, a change in land use that
3 violates a farmland preservation agreement.

4 (c) Seek a civil forfeiture for a change in land use that violates a farmland
5 preservation agreement.

6 (2) A forfeiture under sub. (1) (c) may not exceed twice the value of the land
7 covered by the agreement at the time of the violation.

8 **91.70 Farmland preservation agreements; exemption from special**
9 **assessments.** (1) Except as provided in sub. (3), no political subdivision, special
10 purpose district, or other local governmental entity may levy a special assessment
11 for sanitary sewers, ^{or} water, lights, or drainage against land in agricultural use, if the
12 land is covered by a farmland preservation agreement.

13 (2) A political subdivision, special purpose district or other local governmental
14 entity may deny the use of improvements for which the special assessment is levied
15 to land that is exempt from the assessment under sub. (1).

16 (3) The exemption under sub. (1) does not apply to any of the following:

17 ^{none} (a) An assessment that an owner voluntarily pays, after the assessing
18 authority provides notice of the exemption under sub. (1).

19 (b) An assessment lawfully imposed by a drainage district under ch. 88.

****NOTE: See the note following proposed s. 91.50.

20 SUBCHAPTER V

21 SOIL AND WATER CONSERVATION

22 **91.80 Soil and water conservation by persons claiming tax credits. (1)**

23 An owner claiming farmland preservation tax credits under s. 71.613 shall comply

with applicable land and water conservation standards promulgated by the department under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c).

****NOTE: Is this intended to apply to owners with preexisting agreements? If so, is there any problem with that? Do the agreements themselves have language about the standards that must be met?

(2) An owner is not eligible for farmland preservation tax credits related to a farm if the county land conservation committee has issued a notice of noncompliance under s. 91.82 (2) against the farm and has not withdrawn the notice of noncompliance.

****NOTE: This is not necessary given proposed s. 71.613 (3) (a) 2.

91.82 Compliance monitoring. (1) COUNTY RESPONSIBILITY. ^(a) A county land

conservation committee shall monitor compliance with s. 91.80 ⁽¹⁾ and for that purpose may do any of the following:

1. ~~(a)~~ Inspect land that is covered by a farmland preservation agreement or farmland preservation zoning and that is in agricultural use.

2. ~~(b)~~ Require an owner to certify, not more than annually, that the owner complies with s. 91.80 ⁽¹⁾.

(2) NOTICE OF NONCOMPLIANCE. ^(a) A county land conservation committee may issue a written ~~order~~ ^{notice} of noncompliance to an owner, and may file a copy of the notice with the department of revenue, if the committee finds that the owner has done any of the following:

****NOTE: Wouldn't you want to require the committee to notify DOR if it issues a notice? Because isn't a person ineligible if an order is issued and wouldn't you want DOR to know that?

1. ~~(a)~~ Failed to comply with s. 91.80 ⁽¹⁾.

2. ~~(b)~~ Failed to permit a reasonable inspection under sub. (1) ^(a).

3. ~~(c)~~ Failed to certify compliance as required under sub. (1) ^(b).

***NOTE: It seems that to determine that a landowner falsely certified compliance, the committee would have to determine that the landowner failed to comply with s. 91.80 (1). That is why I deleted the last part of proposed par. (c).

(3) PROCEDURE. The department may promulgate rules prescribing procedures for the administration of this section by land conservation committees.

***NOTE: Shouldn't the draft say something about requiring committees to withdraw or cancel notices? See current s. 92.104 (2).

SECTION 39. 92.04 (2) (c) of the statutes is repealed.

SECTION 40. 92.05 (3) (L) of the statutes is amended to read:

92.05 **(3) (L)** *Technical assistance; performance standards.* The department shall provide technical assistance to county land conservation committees and local units of government for the development of ordinances that implement standards adopted under s. 92.07 (2), 92.105 (1), 92.15 (2) or (3) or 281.16 (3). The department's technical assistance shall include preparing model ordinances, providing data concerning the standards and reviewing draft ordinances to determine whether the draft ordinances comply with applicable statutes and rules.

SECTION 41. 92.104 of the statutes is repealed.

SECTION 42. 92.105 of the statutes is repealed.

SECTION 43. 92.106 of the statutes is repealed.

SECTION 44. 92.14 (2) (e) of the statutes is amended to read:

92.14 **(2) (e)** Promoting ~~compliance with the requirements under ss. 92.104 and 92.105~~ land and water conservation by persons claiming ~~a~~ farmland preservation credit tax credits under subch. IX of ch. 71 s. 71.613.

SECTION 45. 92.14 (3) (a) 1. of the statutes is amended to read:

92.14 **(3) (a) 1.** Compliance with soil and water conservation requirements ~~under ss. 92.104 and 92.105~~ s. 91.80 (1) by persons claiming ~~a~~ farmland preservation credit tax credits under subch. IX of ch. 71 s. 71.613.

1 **SECTION 46.** 92.14 (3) (d) of the statutes is amended to read:

2 92.14 (3) (d) Implementing land and water resource management projects
3 undertaken to comply with ^{↓ soil and water conservation} the requirements ~~under ss. 92.104 and 92.105~~ s. 91.80 (1)
4 ^{↓ applicable to} ~~by persons claiming a~~ farmland preservation credit tax credits under subch. IX of
5 ^{plain text} ~~ch. 71~~ s. 71.613. ^{plain text}

****NOTE: A different treatment of these parts of s. 92.14 may be necessary, given that under this draft there are, in effect, 2 farmland preservation tax credits.

6 **SECTION 47.** 101.143 (4) (ei) 1m. a. of the statutes is amended to read:

7 101.143 (4) (ei) 1m. a. The owner or operator of the farm tank owns a parcel
8 of 35 or more acres of contiguous land, on which the farm tank is located, which is
9 devoted primarily to agricultural use, as defined in s. 91.01 (1), including land
10 designated by the department of natural resources as part of the ice age trail under
11 s. 23.17, which during the year preceding submission of a first claim under sub. (3)
12 produced gross farm profits, as defined in s. ~~71.58 (4)~~ ^{71.613 (1) (g) < (g)}, of not less than \$6,000 or
13 which, during the 3 years preceding that submission produced gross farm profits, as
14 defined in s. ~~71.58 (4)~~ ^{71.613 (1) (g)}, of not less than \$18,000, or a parcel of 35 or more acres, on
15 which the farm tank is located, of which at least 35 acres, during part or all of the
16 year preceding that submission, were enrolled in the conservation reserve program
17 under 16 USC 3831 to 3836.

****NOTE: Do you want to keep the reference to s. 71.58 (4), or do you want the new definition for gross farm profits under s. 71.613 (1)?

18 **SECTION 48.** 101.143 (4) (ei) 1m. b. of the statutes is amended to read:

19 101.143 (4) (ei) 1m. b. The claim is submitted by a person who, at the time that
20 the notification was made under sub. (3) (a) 3., was the owner of the farm tank and
21 owned a parcel of 35 or more acres of contiguous land, on which the farm tank is or
22 was located, which was devoted primarily to agricultural use, as defined in s. 91.01

(1), including land designated by the department of natural resources as part of the ice age trail under s. 23.17, which during the year preceding that notification produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or which, during the 3 years preceding that notification, produced gross farm profits, as defined in s. ~~71.58 (4)~~ ^{71.613 (1) (g)}, of not less than \$18,000, or a parcel of 35 or more acres, on which the farm tank is located, of which at least 35 acres, during part or all of the year preceding that notification, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

****NOTE: Do you want to keep the reference to s. 71.58 (4), or do you want the new definition for gross farm profits under s. 71.613 (1)?

change component **SECTION 49.** 165.25 (4) (ar) of the statutes, as affected by 2007 Wisconsin Acts ^{76 and 96} ~~458~~, is amended ^{repealed and recreated} to read:

165.25 (4) (ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection relating to the enforcement of ss. ~~91.68~~ ^{100.195,} 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, ~~100.20,~~ ^{100.21,} 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50, ~~100.51,~~ ^{100.55} and ~~100.195~~ and chs. 126, 136, 344, 704, 707, and 779, together with any other services as are necessarily connected to the legal services.

SECTION 50. 281.16 (3) (e) of the statutes is amended to read:

281.16 (3) (e) An owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by this state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards under this subsection unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source, to the owner or operator. For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), ~~92.105 (1)~~, 92.15 (4) and

1 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that
2 specify criteria for determining whether cost-sharing is available under s. 281.65
3 and the department of agriculture, trade and consumer protection shall promulgate
4 rules that specify criteria for determining whether cost-sharing is available under
5 s. 92.14 or from any other source. The rules may not allow a determination that
6 cost-sharing is available to meet local regulations under s. 92.07 (2), ~~92.105 (1)~~ or
7 92.15 that are consistent with or that exceed the performance standards,
8 prohibitions, conservation practices or technical standards under this subsection
9 unless the cost-sharing is at least 70% of the cost of compliance or is from 70% to 90%
10 of the cost of compliance in cases of economic hardship, as defined in the rules.

****NOTE: How should this be treated?

11 **SECTION 51.** 281.65 (5) (b) of the statutes is amended to read:

12 281.65 (5) (b) Prepare sections of the priority watershed or priority lake plan
13 relating to farm-specific implementation schedules, requirements under ss. ~~92.104~~
14 ~~and 92.105 91.80 (1)~~, ^{281.16 (3) (e)} animal waste management and selection of agriculturally
15 related best management practices and submit those sections to the department for
16 inclusion under sub. (4m) (b). The best management practices shall be cost-effective
17 best management practices, as specified under sub. (4) (e), except in situations in
18 which the use of a cost-effective best management practice will not contribute to
19 water quality improvement or will cause a water body to continue to be impaired as
20 identified to the federal environmental protection agency under 33 USC 1313 (d) (1)
21 (A).

22 **SECTION 52.** 281.65 (5) (d) of the statutes is amended to read:

23 281.65 (5) (d) Develop a grant disbursement and project management schedule
24 for agriculturally related best management practices to be included in a plan

1 established under sub. (4) (g) and identify recommendations for implementing
2 activities or projects under ss. 91.80 (1), 92.10, 92.104 and 92.105 and 281.6 (3) (e)

3 **SECTION 53.** 281.65 (5) (e) of the statutes is amended to read:

4 281.65 (5) (e) Identify areas within a priority watershed or priority lake area ✓

5 that are subject to activities required under ss. 92.104 and 92.105 91.80 (1) s. 281.6 (3) (e)

****NOTE: I do not know whether these are the appropriate changes to s. 281.65.

6 (END)

INS 6-20

Section #. 71.30 (3) (f) of the statutes is amended to read:

71.30 (3) (f) The total of ~~farmers' drought property tax credit under s. 71.28 (1fd)~~, farmland preservation credit under subch. IX, farmland tax relief credit under s. 71.28 (2m), dairy manufacturing facility investment credit under s. 71.28 (3p), enterprise zone jobs credit under s. 71.28 (3w), film production services credit under s. 71.28 (5f) (b) 2., and estimated tax payments under s. 71.29.

1987 a. 312; 1987 a. 411 ss. 144, 145, 182 to 185; 1989 a. 31, 56; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33, 99, 135, 255; 2005 a. 25, 74, 361, 479, 483; 2007 a. 20. 1987 a. 312; 1987 a. 411 ss. 144, 145, 182 to 185; 1989 a. 31, 56; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33, 99, 135, 255; 2005 a. 25, 74, 361, 479, 483; 2007 a. 20.

INS 8-10

X Section #. 71.49 (1) (f) of the statutes is amended to read:

as affected by 2007 Wisconsin Act 20,

↓
X 71.49 (1) (f) The total of ~~farmers' drought property tax credit under s. 71.47 (1f)~~, farmland preservation credit under subch. IX, farmland tax relief credit under s. 71.47 (2m), dairy manufacturing facility investment credit under s. 71.47 (3p), enterprise zone jobs credit under s. 71.47 (3w), film production services credit under s. 71.47 (5f) (b) 2., and estimated tax payments under s. 71.48.

1987 a. 312, 411; 1989 a. 31, 56; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27; 2001 a. 16; 2003 a. 99, 135, 255; 2005 a. 74, 361, 479, 483; 2007 a. 20. 1987 a. 312, 411; 1989 a. 31, 56; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27; 2001 a. 16; 2003 a. 99, 135, 255; 2005 a. 74, 361, 479, 483; 2007 a. 20.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0447/P1insMES
RCT&MES:kjf:jf

INS 15-7

Ten dollars

(a) \$10.00, if the qualifying acres are located in a farmland preservation zoning district and are also subject to a farmland preservation agreement that is entered into after the effective date of this paragraph [revisor inserts date].

Seven dollars and 50 cents

(b) \$7.50, if the qualifying acres are located in a farmland preservation zoning district but are not subject to a farmland preservation agreement that is entered into after the effective date of this paragraph [revisor inserts date].

Five dollars

(c) \$5.00, if the qualifying acres are subject to a farmland preservation agreement that is entered into after the effective date of this paragraph [revisor inserts date], but are not located in a farmland preservation zoning district.

Insert 21-4

X
(21m) "Livestock" means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

Insert 21-7

(22m) "Overlay district" means a zoning district that is superimposed on one or more other zoning districts and imposes additional restrictions on the underlying districts.

Insert 23-21

91.04 Department to report. At least once every 2 years, beginning not later than December 31, 2011, the department shall submit a farmland preservation report to the board of agriculture, trade and consumer protection and provide copies of the report to the department of revenue and the department of administration. The department shall prepare the report in cooperation with the department of revenue and shall include all of the following in the report:

(1) A review and analysis of farmland availability, uses, and use trends in this state, including information related to farmland conversion statewide and by county.

(2) A review and analysis of relevant information related to the farmland preservation program under this chapter and associated tax credit claims under subch. IX of ch. 71, including information related to all of the following:

(a) Participation in the program by political subdivisions and landowners.

(b) Tax credit claims by landowners, including the number of claimants, the amount of credits claimed, acreage covered by tax credit claims, the amount of credits

claimed under zoning ordinances and under farmland preservation agreements, and relevant projections and trends.

(c) The number, identity, and location of counties with certified farmland preservation plans.

(d) Trends and developments related to certification of farmland preservation plans.

(e) The number, identity, and location of political subdivisions with certified farmland preservation zoning ordinances.

(f) Trends and developments related to certification of farmland preservation zoning ordinances.

(g) The number, nature, and location of working lands enterprise areas.

(h) The number and location of farms covered by farmland preservation agreements, including new farmland preservation agreements, and the number and location of farms for which farmland preservation agreements have expired.

(i) Conservation compliance by landowners under s. 91.80 and compliance activities by county land conservation committees under s. 91.82.

(j) Rezoning of land out of farmland preservation districts under s. 91.48, including the amounts of conversion fees paid to political subdivisions under s. 91.48 (2).

(k) Program costs, cost trends, and cost projections.

(L) Key issues related to program performance and key recommendations, if any, for enhancing the program.

Insert 24-7

(b) Identifies, describes, and documents other development trends, plans, or needs, that may affect farmland preservation and agricultural development in the

county, including trends, plans, or needs related to population and economic growth, housing, transportation, utilities, communications, business development, community facilities and services, energy, waste management, municipal expansion, and environmental preservation.

Insert 24-15

5. Anticipated changes in the nature, scope, location, and focus of agricultural production, processing, supply, and distribution.

X 6. Goals for agricultural development in the county, including goals related to the development of enterprises related to agricultural. *see*

Insert 25-15

no P The county may incorporate information contained in other parts of the comprehensive plan into the farmland preservation plan by reference.

Insert 25-16

(3) To adopt a farmland preservation plan under sub. (1), a county shall follow the procedures under s. 66.1001 (4) for the adoption of a comprehensive plan.

Insert 30-12

(3) The population of a county for the purposes of sub. (1) is the population on the effective date of this subsection [revisor inserts date].

Insert 35-4

(3) The population of a county for the purposes of sub. (1) is the population on the effective date of this subsection [revisor inserts date].

Insert 42-5

(c) The proposed farmland preservation zoning districts under the farmland preservation zoning ordinance contain only isolated prior nonconforming uses.

Insert 43-3

(2) The department may promulgate rules imposing additional limits on the permitted uses that may be allowed in a farmland preservation zoning district in order for a farmland preservation zoning ordinance to comply with s. 91.42.

Insert 44-3

(1m) ADDITIONAL LIMITATIONS. The department may promulgate rules imposing additional limits on the conditional uses that may be allowed in a farmland preservation zoning district in order for a farmland preservation zoning ordinance to comply with s. 91.42.

Insert 48-6

not the greater of the following:

(a) One thousand dollars

(b) An amount specified in the certified farmland preservation ordinance.

Insert 56-8

(b) For the purpose of par. (a), a county land conservation committee shall inspect each farm for which the owner claims farmland preservation tax credits at least once every 4 years.

(c) For the purpose of par (a), a county land conservation committee

Insert 56-13

(d) At least once every 4 years, the department shall review each county land conservation committee's compliance with par. (b).

Insert 57-1

(b) A county land conservation committee shall provide to the department of revenue a copy of each notice of noncompliance issued under par. (a).

(c) If a county land conservation committee determines that an owner has corrected the failure described in a notice of noncompliance under par. (a), it shall

✓
withdraw the notice of noncompliance and notify the owner and the department of
the withdrawal.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0447/P2dn
RCT&MES:K... *GF*

Date

or "essential."

This is a redraft of the proposal to revamp the farmland preservation program.

Proposed s. 91.46 uses the words "unnecessarily" and "necessary" in some of the conditions that must be met to allow certain uses as conditional uses in farmland preservation zoning districts. In the /P1 version of the draft, I raised questions about the standards that were intended to be used in applying those conditions. The response to the questions in the redraft instructions makes me think that using "unnecessarily" and "necessary" without more does not accurately capture the intended meaning of the conditions. Part of my job is to try to ensure that statutory language captures the intended meaning as closely as possible.

of According to the Merriam-Webster's Collegiate Dictionary, eleventh edition, "unnecessarily" means "not by necessity" and "necessity" means "the quality or state of being necessary." "Necessary" means "absolutely needed" or "required." In the /P1 draft, I was attempting to ask under what conditions the conversion of prime farmland from agricultural use in order to site a nonfarm residence would be absolutely needed. Another way to get at it would be to ask: necessary to achieve what goal or end? The conversion of prime farmland in order to site a nonfarm residence is necessary to accomplish what? Frequently, the word "necessary" is followed by "for," "to," or "in order to."

The response to my questions was that the draft intentionally gives local governments discretion to make the determinations based on the widely variable facts of each case. I think a person who wished to challenge a local government's decision could argue that the draft actually gives local governments very little discretion because "necessary" is such a strong word. It would then be up to a court to decide whether the law gives local governments much discretion and how any discretion must be exercised.

For provisions like proposed s. 91.46 (4) (a), perhaps the draft could say something to the effect that the local government must determine that the use serves the public interest and the location is the best one available. For provisions like proposed s. 91.46 (4) (b), perhaps the draft could require the local government to weigh the effects of the conversion and determine that the benefits outweigh the costs. Proposed s. 91.46 (4) (d) might require that the effect on other farmland be minimized.

There are many different ways that the conditions in proposed s. 91.46 could be expressed and I will do whatever I can to draft statutory language that captures the department's intent in this respect.

Rebecca C. Tradewell
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Because the draft contains, in effect, two farmland preservation tax credits, there were quite a few cross-references that needed to be changed. I was pretty sure that some should be changed, and I changed those. I was unsure about whether others should be changed, so I added a "****NOTE" with a question. There are also quite a few other statutes that you need to look at to decide whether the current cross-reference to "subch. IX" is OK, or whether it needs to be modified. Please review the following tax statutes and let me know how you would like them treated: ss. 71.03 (6m), 71.07 (3m) (c) 1., 71.07 (6e) (c) 2., 71.47 (2m) (c) 1., 71.49 (1) (f), and 71.88 (2) (b).

Current law requires a claimant to be domiciled in this state during the entire year. See s. 71.58 (1) (intro.). Do you want a similar provision in this bill? If not, do you want the credit prorated for nonresidents or part-year residents based on the ratio of their Wisconsin adjusted gross income to their federal AGI?

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